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EXAMINER

HAYES, KRISTEN C

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/528,026	Applicant(s) ODERWALD ET AL.	
	Examiner Kristen C. Hayes	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/14/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 18 and 19, line 3 recite the limitation "direction remove". It seems as though "remove" should be --removed--

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 3, 9, 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 3 recites the limitation of "the removal from the holder takes place while retaining orientation". It is unclear as to what is retaining orientation to what.
5. Claim 9 recites the limitation of "a cut-off part retains its orientation". It is unclear as to what the cut-off part is retaining its orientation to.
6. Claims 18 and 19 recites the limitation "the orientation means". There is insufficient antecedent basis for this limitation in the claim.
7. Claims 18 and 19 recites the limitation "the sprout" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3643

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Meester US 2,167.

10. Regarding claim 1, Meester discloses an elongated holder with a longitudinal axis (Meester, Figure 1), a longitudinal opening (formed between 6 and 7) which closes along the longitudinal axis (Meester, column 1: lines 54- column 2: lines 1-3). Given the structure, the method is inherently performed.

11. Regarding claim 2, Meester further discloses a second cutting plane (formed at (31, 32)). Given the structure, the method is inherently performed.

12. Regarding claim 6, Meester discloses an elongated holder with a longitudinal opening (formed between 6 and 7), and a first cutting element (6 or 7).

13. Regarding claim 7, Meester further discloses the apparatus comprising a transverse opening which is oriented transversely to the longitudinal axis (Meester, Figure 1).

14. Regarding claim 8, Meester further discloses a second cutting element (31, 31).

15. Claims 1, 3, 6, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Groves US 5,899,019.

16. Regarding claim 1, Groves discloses an elongated holder (18) with a longitudinal axis, a longitudinal opening (formed between 66a and 66b) which closes along the longitudinal axis (Groves, Figures 1 and 2). Given the structure, the method is inherently performed.

17. Regarding claim 3, Groves further discloses the removal from the holder takes place while retaining orientation (as best understood) (Groves, Figures 9 and 10). Given the structure, the method is inherently performed.

18. Regarding claim 6, Groves discloses an elongated holder with a longitudinal opening (formed between 66a and 66b), and a first cutting element (40a or 40b).

Art Unit: 3643

19. Regarding claim 7, Groves further discloses the apparatus compressing a transverse opening which is orientated transversely to the longitudinal axis (Groves, Figure 1).

20. Regarding claim 9, Groves further discloses the holder having a cross-section that in enclosed condition the cut-off part is clampingly enclosed, so that upon removal a cut-off part retains its orientation (as best understood) (Groves, Figures 9 and 10).

21. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Akerson US 4,361,959.

22. Regarding claim 1, Akerson discloses an elongated holder (52) with a longitudinal axis, a longitudinal opening (Akerson, Figure 5)(formed between 55 and 63) which closes along the longitudinal axis (Akerson, column 2: lines 55-57). Given the structure, the method is inherently performed.

23. Regarding claim 6, Akerson further discloses an elongated (52) holder with a longitudinal opening (formed between 55 and 63), and a first cutting element (55 or 60).

24. Claims 1, 5, 6, 12 and 17 are rejected under 35 U.S.C. 102(e) as anticipated by Rombouts et al. US 2004/0118041.

25. Regarding claim 1, Rombouts discloses an elongated holder (in that the holder has length)(Rombouts, Figures 9 and 10b) with a longitudinal axis, a longitudinal opening (formed between 170 and 180), which closes along the longitudinal axis (Rombouts, ¶0042: lines 7-9). Given the structure, the method is inherently performed

26. Regarding claim 5, Rombouts further discloses a compressed air nozzle (182a, 182b). Given the structure, the method is inherently performed.

27. Regarding claim 6, Rombouts discloses an elongated holder (in that the holder has length)(Rombouts, Figures 9 and 10b) with a longitudinal opening (formed between 170 and 180), and a first cutting element (166).

Art Unit: 3643

28. Regarding claim 12, Rombouts further discloses an expelling element (182a, 182b).

29. Regarding claim 17, Rombouts discloses an automated apparatus comprising an image recognition means (Rombouts, ¶0004), a gripper (150), an apparatus according to claim 6 (see above), transport and manipulation means (Rombouts, ¶0003), control means (28), and manipulation means under control of the image recognition means (Rombouts, ¶0030).

Claim Rejections - 35 USC § 103

30. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

31. Claims 4, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akerson US 4,361,959.

32. Regarding claim 4, Akerson further discloses rotating two sections (52, 61) which glide along each other along a rotation axis to form a cylinder (Akerson, column 2: lines 55-57). The sections of Akerson appear to be quarter rounds rather than half rounds; however, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sections of Akerson so that they were half rounds to create a sturdier device.

33. Regarding claim 10, Akerson further discloses the elongated holder comprising a first section (52), with the cutting element comprising a second (61) section. The sections of Akerson appear to be quarter rounds rather than half rounds; however, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the sections of Akerson so that they were half rounds to create a sturdier device.

Art Unit: 3643

34. Regarding claim 11, Akerson further discloses the sections are arranged to carry out an axial movement relative to each other during the rotation (Akerson, column 2: lines 55-57).

35. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rombouts et al. US 2004/0118041.

36. Regarding claims 13 and 14, Rombouts discloses the device of claim 12 but does not disclose the expelling element having an outflow longitudinal opening. However, the expelling element having an outflow longitudinal opening oriented along the longitudinal axis of the holder would allow the expelling element to blow the cut-off part towards the floor, (where it could be gathered and discarded) or towards an underlying conveyor belt, (which would carry the cut-off part away to be disposed of. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the expelling element of Rombouts so that the outflow opening was longitudinally arranged to provide predictable result of easing clean up of the device.

37. Regarding claim 15, Rombouts further discloses the outflow longitudinal opening (184b) being provided in the second cutting element (As seen opposite 166 next to 170 in Figure 10c. First cutting element 166 and the second cutting element form cutting mechanism 160).

38. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meester US 2,167,337.

39. Regarding claim 16, Meester further discloses a spring (8) connecting the second cutting element. Meester does not disclose the spring being a pair of parallel leaf springs. However, it would have been an obvious engineering design choice to one of ordinary skill in the art to substitute parallel leaf springs for the springs of Meester, depending on what was more cost effective for the user.

Response to Arguments

40. Applicant's arguments filed 10/14/2008 have been fully considered but they are not persuasive.

41. The 112 2nd rejection of claims 3 and 9 is maintained. The sprout, growing medium, and location and orientation of each are not claimed, making it difficult to determine the meaning of the claims.

42. As to Meester, Groves and Akerson not disclosing the limitations of the method claims or claim 6, given the structure disclosed by these references, the method is inherently performed. The thorn removing device and stripping tool of Meester and Groves are not open. They are enclosed by elements such as 21-23 or arms 1 and 2 (Meester) and by side portions (Groves, Figure 9).

43. As to Akerson not disclosing the limitations of the method claims or claim 6, given the structure disclosed the method is inherently performed. Also, the cut-off part would be enclosed by the holder until the action of the cutting element was reversed, thereby releasing the cut-off part.

44. As to Romberts not disclosing a holder, the holder of Romberts is shown in Figure 10a. The cut-off part would be enclosed in the holder until the action of the cutting element was reversed, thereby releasing the cut-off part. The pressure exerting pieces are considered part of the holder, which is seen in Figure 10a.

45. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

Art Unit: 3643

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
29 December 2008

/David J Parsley/
Primary Examiner, Art Unit 3643